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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. ANTHONY WILLIAM RODRIGUEZ, Defendant and Appellant.	E070044 (Super.Ct.No. FWV17003484) OPINION

APPEAL from the Superior Court of San Bernardino County. Shahla Sabet, Judge. Affirmed.

Steven S. Lubliner, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Melissa Mandel, Meredith S. White, and Tami Falkenstein Hennick, Deputy Attorneys General, for Plaintiff and Respondent.

I

INTRODUCTION

After the trial court denied defendant and appellant Anthony William Rodriguez's motion to suppress, defendant pleaded no contest to possession of methamphetamine while armed with a firearm (Health & Saf. Code, § 11370.1, subd. (a); count 1); unlawful firearm activity (Pen. Code, § 29805; count 2); and driving or taking a vehicle without the owner's consent (Veh. Code, § 10851, subd. (a); count 3).[1] In return, the trial court suspended a four-year sentence and placed defendant on probation for a period of three years on various terms and conditions. On appeal, defendant argues the trial court erred in denying his motion and his renewed motion to suppress evidence. We find no error and affirm the judgment.

II

FACTUAL AND PROCEDURAL BACKGROUND[2]

On September 7, 2017,[3] sheriff's deputies were dispatched to a location in Bloomington regarding subjects that appeared to be gang members drinking alcohol in public. Upon arrival, the deputies contacted defendant. During a cursory search of his

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[1] In a separate incident, defendant was found driving a stolen vehicle.

[2] A summary of the factual background is taken from the probation officer's report.

[3] The record refers to the date of incident as both September 7 and 8, 2017. We shall refer to the date of incident as September 7, 2017.

person, defendant advised the deputy that he had a gun. The deputy found a loaded handgun in defendant's pocket. Defendant was also in possession of methamphetamine.

On September 11, 2017, a felony complaint was filed charging defendant with possession of methamphetamine while armed with a firearm (Health & Saf. Code, § 11370.1, subd. (a); count 1); unlawful firearm activity (Pen. Code, § 29805; count 2); and driving or taking a vehicle without the owner's consent (Veh. Code, § 10851, subd. (a); count 3). The complaint further alleged that defendant committed counts 1 and 2 for the benefit of a criminal street gang (Pen. Code, § 186.22 (b)(1)(A)).

On September 25, 2017, defendant filed a motion to suppress all evidence seized and observations made during the September 7, 2017 incident pursuant to Penal Code section 1538.5. Defendant argued that the deputies had illegally entered the home on 9th Street and illegally detained and searched defendant and other persons without reasonable suspicion.

On September 27, 2017, the People filed their opposition to defendant's motion to suppress evidence.

On October 4, 2017, the trial court held the preliminary hearing simultaneously with defendant's motion to suppress evidence. At that hearing, the People's witnesses in relevant part testified as follows: On September 7, 2017, at approximately 2:00 a.m., a 911 call came into the San Bernardino County Sheriff's Department reporting that several people the caller believed to be gang members were engaging in drug use, throwing glass bottles, drinking, smoking marijuana, and being excessively loud. Shortly thereafter, the

female caller, who wished to remain anonymous, made another 911 call, reporting that the offensive behavior was escalating. The caller did not provide any descriptions of the suspects. The caller also did not specify whether voices on the street or music was getting louder. In addition, the caller did not clarify why she believed the people on the street were gang members.

San Bernardino County Sheriff's Department Deputy Michael Johnson and two other officers responded to the call from dispatch and drove to 18485 9th Street, a residential area in Bloomington. Deputy Johnson had been dispatched to that same house several times before, including the night of September 6, 2017. During that prior incident, as soon as officers walked up to the house, several individuals ran out the back of the house.

As Deputy Johnson and the other officers arrived on the scene, the officers heard loud talking from two houses away. They arrived at the subject house at approximately 2:53 a.m. Deputy Johnson exited his vehicle, and a person standing in front of the house quickly ran towards the house. As the officers approached the driveway, Deputy Johnson saw six or seven people in the garage, trying to close the garage door and saying "shhh" and "quiet down." The garage was a "standalone garage," with a "roll-up door." The individuals were "pulling it down a little bit." Deputy Johnson explained that the garage door was about "a quarter to a third down," such that he could see the individuals from the chest down. Deputy Johnson pushed up the partially opened garage door and ordered the individuals to come out of the garage so he could see who he "was dealing with,"

because other officers had previously found weapons at that location. Based on his prior experience dealing with people at that residence, Deputy Johnson did not "feel safe just letting these subjects stay inside the garage" and he "wanted to have them come out and see who [he] was dealing with." Everyone complied and came out of the garage. Deputy Johnson recognized that at least two of the people in the garage were on either probation or parole, and decided to conduct patdown searches of everyone, including defendant, for officer safety.

Defendant's hands were in his front pockets. Deputy Johnson was concerned defendant might have a gun in his pocket. Deputy Johnson conducted a patdown search of defendant and felt a large heavy object in defendant's front pants pocket. Deputy Johnson believed the object was a gun. He asked defendant what the object was, and defendant told him it was a gun. Deputy Johnson removed the loaded handgun from defendant's pocket, placed him under arrest, and then conducted a full search of defendant's person. When asked if he had any drugs, defendant told Deputy Johnson that he had methamphetamine in his shoe. Deputy Johnson recovered the methamphetamine from defendant's shoe.

Following argument on the motion to suppress, the court denied defendant's motion to suppress evidence "in light of all of the facts." The court explained that the officers received two reports of a disturbance at the address, and when the officers arrived they heard a "disturbance" in the area. The officers had previously been to the house and encountered armed occupants. In addition, some of the people present were on

parole, it was almost 3:00 a.m., and a person ran inside upon seeing the officers arrive, at which point the occupants tried to close the garage. The court found that the officers acted reasonably when they lifted up the partially open garage door and ordered the occupants out of the garage. As to the patdown search, the court concluded that Deputy Johnson properly conducted the search for officer safety based on defendant having his hands in his pockets, the officers were outnumbered, and some of the people present were on probation or parole.

On December 8, 2017, the trial court heard and denied defendant's renewed motion to suppress evidence finding defendant had no new evidence to present. In relevant part, the following colloquy occurred between the court and defense counsel:

"THE COURT: [¶] . . . [¶] . . . The motion to suppress will be heard and can be heard a second time in Superior Court if there is new evidence or information that was not available at the time of the first motion. . . . [¶] . . . [¶]

"[DEFENSE COUNSEL]: I believe there's two separate issues. One is if there's facts and information, and the other issue is in the event there was other law that was not before the Court at that time. That other law is what I introduced in my supplemental."

When the court inquired whether there was new law, defense counsel replied "There was law that was not argued at the time of the motion." The court noted that if the law was not argued at the time of the first motion, then it was not the court's problem and again asked defense counsel if there was new law. Defense counsel stated, "Not a new law, no." When the court asked defense counsel what case he did not argue before,

defense counsel pointed out several cases "all having to do with the fact that a garage is considered part, parcel of the home," and argued the detention was illegal.

The court responded: "Okay. All right. I am not hearing this motion again. But let me put on the record, then explain to you. I read all of your arguments entirely. The fact that there was illegal entry to that garage, I agree with you, counsel. But there was nothing taken. There was no search of the garage that rendered any fruit. [¶] . . . [¶] . . . Yes, the entrance—detention has nothing [to] do with the illegal entry. Sir, there are two separate issues. They entered the garage. And I agree with you, it was illegal. They had no exigent circumstances or any reason to enter. . . . [¶] By the way, in argument, counsel misrepresented to The Court, said there was no reference. Yes. The officer said I, after order, I asked them to come out, I went inside the garage. [¶] Going inside the garage was illegal and in violation of Fourth Amendment. I agree. However nothing was found in the garage. [¶] The order or request of all of you get out of the garage occurred before the entry to the garage, the illegal entry. And it's a separate issue. Detention is separate. [¶] So do you have any arguments, new arguments, that deal with the reasonableness of the officers ordering them to get out of the garage, patting them down, and finding contraband?"

Following further argument, the court read Penal Code section 1538.5 and found that the court was "bound to accept all of the findings of the lower court judge." The court explained that if counsel had no new evidence, the court was "limited to the four corners of the preliminary hearing and all of the findings of the magistrate, whether he or

she was right or wrong." The court also noted: "And the findings I read clear, over and over. The judge found that under the circumstances, the opening of half-opened garage door, ordering out, and patting them down was reasonable. And I am bound by that. I may disagree with that finding. But at this point, it's not my job to sit as a court of appeal and reevaluate the facts. In fact, I have to make every deference to the factual findings as well as all findings." In conclusion, the court denied defendant's renewed motion to suppress evidence.

The court however granted defendant's motion to dismiss the gang allegations as to counts 1 and 2 pursuant to Penal Code section 995. Defendant thereafter pleaded no contest to counts 1 through 3.

On February 7, 2018, the trial court imposed and then suspended a term of four years on count 1, and two-year concurrent sentences on both counts 2 and 3. The court thereafter placed defendant on probation for a period of three years on various terms and conditions of probation.

On February 21, 2018, defendant filed a timely notice of appeal. On February 28, 2018, defendant's appellate counsel filed an amended notice of appeal correcting the date of judgment appealed from.

III

DISCUSSION

A. *Motion to Suppress Evidence*

Defendant argues the trial court erred in denying his suppression motion because the detention and patdown search were not justified by reasonable suspicion. We disagree.

"In ruling on a motion to suppress, the trial court must find the historical facts, select the rule of law, and apply it to the facts in order to determine whether the law as applied has been violated. [Citation.] We review the court's resolution of the factual inquiry under the deferential substantial evidence standard. The ruling on whether the applicable law applies to the facts is a mixed question of law and fact that is subject to independent review. [Citation.]" (*People v. Ramos* (2004) 34 Cal.4th 494, 505.)

1. Detention

The Fourth Amendment protects against unreasonable searches and seizures. (U.S. Const., 4th Amend.; *Navarette v. California* (2014) 572 U.S. 393, 396-397 (*Navarette*); *People v. Casares* (2016) 62 Cal.4th 808, 837; *People v. Suff* (2014) 58 Cal.4th 1013, 1053-1054.) A detention is reasonable pursuant to the Fourth Amendment when the detaining officer can point to specific articulable facts that, in light of the totality of circumstances, provide some objective manifestation that the person detained may be involved in criminal activity. (*Navarette*, at p. 397; *People v. Zaragoza* (2016) 1 Cal.5th 21, 56.)

A reasonable suspicion of criminal activity requires less information than a finding of probable cause. (*Navarette, supra,* 572 U.S. at p. 397; *People v. Wells* (2006) 38 Cal.4th 1078, 1083.) "[T]he level of suspicion the standard requires is 'considerably less than proof of wrongdoing by a preponderance of the evidence,' and 'obviously less' than is necessary for probable cause." (*Navarette,* at p. 397.) Law enforcement may base a finding of reasonable suspicion on its observations, together with information from other sources, including an anonymous tip. (*Wells,* at p. 1083; *Navarette*, at p. 397.) "The standard takes into account 'the totality of the circumstances—the whole picture.'" (*Navarette,* at p. 397.) This standard necessarily precludes a "divide-and-conquer" analysis. (*United States v. Arvizu* (2002) 534 U.S. 266, 274.)

Pursuant to the totality of the circumstances, Deputy Johnson lawfully detained defendant based upon a reasonable suspicion that he may have been involved in criminal activity. Deputy Johnson responded to two police calls made in the early morning hours that a group of gang members were throwing bottles, using drugs, and being excessively loud. The second police call indicated that the groups' behavior was escalating. When Deputy Johnson arrived on the scene at around 2:30 a.m., he heard the noise coming from two houses away. Upon seeing Deputy Johnson arrive at the house, a person who had been outside fled quickly to the garage, and the rest of the group attempted to hide in the garage. Deputy Johnson had responded to the same house on several prior occasions and had been at that same house the night before. Deputy Johnson therefore knew that some of the occupants were on probation or parole. Deputy Johnson also was aware that some

of the occupants of the house had been armed during previous contacts with law enforcement. Based on the foregoing, it was reasonable for Deputy Johnson to suspect that defendant was involved in illegal activity or disturbing the peace.

Defendant contends that he and the other occupants of the house simply "quieted down and tried to close the [garage] door some more to prevent noise from escaping," rather than hiding from the police. However, the temporary detention allowed Deputy Johnson to resolve any ambiguity in defendant's behavior and establish whether the behavior was lawful. (*People v. Souza* (1994) 9 Cal.4th 224, 233 [possibility of an innocent explanation does not preclude police officer from entertaining a reasonable suspicion of criminal conduct].) "'Indeed, the principal function of [police] investigation is to resolve that very ambiguity and establish whether the activity is in fact legal or illegal . . . .'" (*Ibid.*) Under the circumstances of this case, Deputy Johnson would have been derelict in his duties had he not investigated the matter.

We conclude that the behaviors alleged by the 911 caller and the observations made by Deputy Johnson upon arriving at the scene, "viewed from the standpoint of an objectively reasonable police officer, amount to reasonable suspicion" that criminal activity may be afoot. (*Ornelas v. United States* (1996) 517 U.S. 690, 696.) The detention was therefore proper.

2. Patdown Search

In *Terry v. Ohio* (1968) 392 U.S. 1 (*Terry*), the United States Supreme Court held that the Constitution permits "a reasonable search for weapons for the protection of the

police officer, where he [or she] has reason to believe that he [or she] is dealing with an armed and dangerous individual." (*Id*. at p. 27.) A patdown search for weapons is justified if "a reasonably prudent [officer] in the circumstances would be warranted in the belief that his [or her] safety or that of others was in danger." (*Ibid*.) "[T]he police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant" the search. (*Id*. at p. 21.) "The judiciary should not lightly second-guess a police officer's decision to perform a patdown search for officer safety. The lives and safety of police officers weigh heavily in the balance of competing Fourth Amendment considerations. [Citations.]" (*People v. Dickey* (1994) 21 Cal.App.4th 952, 957.)

That standard attends to the facts known to the officer, not the officer's subjective motive for conducting the search. (*People v. Sanders* (2003) 31 Cal.4th 318, 334.) Under the standard, "the fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action." (*Scott v. United States* (1978) 436 U.S. 128, 138.) Thus, "[t]he validity of a search does not turn on 'the actual motivations of individual officers.'" (*Sanders*, at p. 334, quoting *Whren v. United States* (1996) 517 U.S. 806, 813.)

An instructive application of these principles is found in *People v. Collier* (2008) 166 Cal.App.4th 1374. In that case, two officers initiated a daytime traffic stop of a vehicle in which the defendant was a passenger. (*Id*. at p. 1376.) The officers smelled

marijuana and one officer asked the defendant to step out of the car. The defendant, who was taller than the officer, "wore baggy shorts that hung down to his ankles and an untucked shirt that extended to his midlegs." (*Ibid.*) Based on the baggy clothing, an officer believed the defendant "might be concealing an otherwise bulging item, perhaps a weapon," and therefore conducted a patdown search. (*Ibid.*) In affirming the denial of the defendant's motion to suppress, the appellate court noted that "'guns often accompany drugs'" and that the officers were about to search the car. (*Id.* at p. 1378.) It was a "commonsense" conclusion that the officer had reasonable concerns for his safety under the circumstances, particularly in light of the defendant's size and his baggy clothing. (*Ibid.*)

In this case, Deputy Johnson was justified in conducting a patdown search of defendant because under the circumstances, he had a reasonable belief that his safety was in danger. The deputies responded to two 911 calls at around 2:30 a.m. concerning loud noise, throwing of beer bottles, drinking, and using drugs. When the deputies arrived at the residence, the occupants attempted to hide from the officers. The deputies were outnumbered by the number of people in the garage. Several of the occupants were on either probation or parole, and the deputies had previously encountered armed occupants at the same residence. Moreover, defendant had his hand in his pocket during the detention and, when asked if he was carrying a weapon, stated that he had a gun. Deputy Johnson's testimony supported a finding of "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant[ed]" the

patdown search. (See *Terry*, *supra*, 392 U.S. at p. 21.) Under the circumstances, we find Deputy Johnson could have reasonably believed his safety was in danger and performed a patdown search to make sure defendant was not armed during his detention. (*Id.* at p. 27; *United States v. Cortez* (1981) 449 U.S. 411, 417 [the totality of the circumstances, or the whole picture, must be taken into account in determining reasonable suspicion]; *People v. Parrott* (2017) 10 Cal.App.5th 485, 495 [statement of rule regarding patdown search].)

A limited, protective search for weapons is permissible if the officer has "reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime. The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger." (*Terry*, *supra*, 392 U.S. at p. 27; see *People v. Avila* (1997) 58 Cal.App.4th 1069, 1074 ["[T]he officer need not be absolutely certain that the individual is armed; the crux of the issue is whether a reasonably prudent person in the totality of the circumstances would be warranted in the belief that his or her safety was in danger."].) We find that Deputy Johnson's patdown was reasonable under the circumstances.

Defendant contends that this court should not analyze the legality of the officer's actions under detention and patdown cases because Deputy Johnson's testimony established that he conducted an unconstitutional probation/parole search of defendant. Defendant is incorrect. Deputy Johnson did not testify that he conducted a probation or

parole search of defendant. Rather, Deputy Johnson specifically testified that officer safety was a concern in conducting the patdown search, and the trial court relied on this finding of fact in reaching its decision that the patdown search was justified. The trial court's reliance on Deputy Johnson's testimony is a finding of fact, which is entitled to deference and is supported by substantial evidence. (*People v. Glaser* (1995) 11 Cal.4th 354, 362.)

Furthermore, in reviewing the trial court's conclusion that the patdown was justified, we resolve all factual issues in support of the ruling. (*People v. Lomax* (2010) 49 Cal.4th 530, 563.) That is because we review the court's findings, whether express or implied, "'"'under the deferential substantial-evidence standard.'"' [Citation.] Accordingly, '[w]e view the evidence in a light most favorable to the order denying the motion to suppress' [citation], and '[a]ny conflicts in the evidence are resolved in favor of the superior court ruling.' [Citation.]" (*People v. Tully* (2012) 54 Cal.4th 952, 979.)

Based on the foregoing, the trial court did not err by denying defendant's motion to suppress.

B. *Renewed Motion to Suppress Evidence*

Defendant contends that the trial court erred in denying his renewed suppression motion because the trial court's comments suggest that "if it had a proper understanding of its powers, [defendant]'s renewed motion would have been granted." We disagree.

A criminal defendant may challenge the reasonableness of a search or seizure by moving to suppress evidence at a preliminary hearing. (*People v. McDonald* (2006) 137

Cal.App.4th 521, 528 (*McDonald*); Pen. Code, § 1538.5, subd. (f)(1).) If the defendant is unsuccessful at the preliminary hearing, he or she must raise the search and seizure issue before the superior court by a motion to dismiss under Penal Code section 995 or in a special hearing under Penal Code section 1538.5 to preserve the issue for appellate review. (*People v. Lilienthal* (1978) 22 Cal.3d 891, 896; *People v. Romeo* (2015) 240 Cal.App.4th 931, 941 (*Romeo*); *McDonald*, at p. 529; Pen. Code, § 1538.5, subds. (i), (m).)

In a special hearing under Penal Code section 1538.5, subdivision (i), "If the motion was made at the preliminary hearing, unless otherwise agreed to by all parties, evidence presented at the special hearing [in the superior court] shall be limited to the transcript of the preliminary hearing and to evidence that could not reasonably have been presented at the preliminary hearing, except that the [P]eople may recall witnesses who testified at the preliminary hearing. If the [P]eople object to the presentation of evidence at the special hearing on the ground[ ] that the evidence could reasonably have been presented at the preliminary hearing, the defendant shall be entitled to an in camera hearing to determine that issue. The [superior] court shall base its ruling on all evidence presented at the special hearing and on the transcript of the preliminary hearing, and the findings of the magistrate shall be binding on the [superior] court as to evidence or property not affected by evidence presented at the special hearing." (Pen. Code, § 1538.5, subd. (i); see *Romeo*, *supra*, 240 Cal.App.4th at p. 941.) "The factual findings of the magistrate are binding on the court, except as affected by any additional evidence

presented at the special hearing." (*Romeo*, at p. 941; see *McDonald*, *supra*, 137 Cal.App.4th at p. 529.)

As previously noted, on appeal from the trial court's ruling, we are also bound by the magistrate's factual findings so long as they are supported by substantial evidence. (*Romeo*, *supra*, 240 Cal.App.4th at p. 941; *McDonald*, *supra*, 137 Cal.App.4th at p. 529; *People v. Brown* (2015) 61 Cal.4th 968, 975 ["we defer to [the magistrate's] factual findings if supported by substantial evidence"].) We directly review the magistrate's determination, drawing all presumptions in favor of the magistrate's factual determination and considering the record in the light most favorable to the ruling. (*Romeo*, at p. 941.) We then judge the legality of the search by measuring the facts, as found by the trier, against the constitutional standard of reasonableness. (*Id*. at pp. 941-942.) We exercise our independent judgment to determine whether, on the facts so found, the search or seizure was reasonable. (*Ibid*.; see *Brown*, at p. 975 ["We independently assess the legal question of whether the challenged [detention] satisfies the Fourth Amendment. [Citation.]"].) In other words, where, as in this case, the superior court sits as a reviewing court, we as an appellate court review the factual determinations of the magistrate except where new superior court evidence is involved. (See *People v. Ramsey* (1988) 203 Cal.App.3d 671, 679, & fn. 2.)

Here, following the preliminary hearing, defendant filed a renewed motion to suppress and a Penal Code section 995 motion. Defense counsel reiterated that the basis for the renewed motion was to present an argument that was not presented at the hearing

on the first motion—that the garage is considered part of the home for purposes of the Fourth Amendment and whether the deputy's opening of the garage door rendered the detention illegal. The superior court explained that it was bound by the transcript of the preliminary hearing and the findings of the magistrate that, "under the circumstances, the opening of the half-opened garage door, ordering out, and patting them down was reasonable." Since defendant had no new evidence to present, the court denied defendant's renewed suppression motion. The court followed the statutorily mandated procedure here.

Citing to *People v. Trujillo* (1990) 217 Cal.App.3d 1219, 1223-1224 (*Trujillo*), defendant argues that a superior court reviews a renewed motion to suppress under Penal Code section 1538.5, subdivision (i), as if it were "an appellate court" and performs the same functions as an appellate court, "reviewing the legal sufficiency of the magistrate's conclusions in light of its findings of fact from the preliminary hearing." The appellate court in *Trujillo* explained the scope of review as follows:

"We note the scope of review of suppression motion rulings has changed due to a 1986 amendment to [Penal Code] section 1538.5, subdivision (i). Formerly, whether or not a defendant made a suppression motion at a preliminary hearing, the defendant was entitled to a 'de novo' consideration of the evidence by the superior court. Thus the superior court was the fact finder whose express and implicit factual determinations were given deference on appeals by defendants and the People. [Citations.] The 1986 amendment, however, makes the findings of the magistrate 'binding' on the superior

court when a suppression motion has already been brought at the preliminary hearing, except to the extent new evidence is allowed by the superior court. . . . While the 1986 amendment could be clearer, it appears intended to make the magistrate the fact finder and the superior court a reviewing court, bound to resolve factual conflicts and draw inferences in favor of the magistrate's ruling. [Citations.]" (*Trujillo, supra*, 217 Cal.App.3d at pp. 1223-1224.)

However, the trial court has no statutory or inherent authority to enlarge the scope of the hearing on its own motion. Rather, under Penal Code section 1538.5, subdivision(i), "[a] defendant is now entitled to only one full [evidentiary] hearing on his [or her] suppression motion. The factual findings of the magistrate . . . are binding on the superior court which, in effect, becomes a reviewing court drawing all inferences in favor of the magistrate's findings, where they are supported by substantial evidence. [Citations.]" (*People v. Williams* (1989) 213 Cal.App.3d 1186, 1191; *People v. Bishop* (1993) 14 Cal.App.4th 203, 210 ["[S]ubdivision (i) further limits de novo review [by judge at the Pen. Code, § 1538.5, subd. (i) hearing] to findings 'affected by' the new evidence, a constraint obviously designed to avoid relitigating all issues."].)

Here, contrary to defendant's claim, the superior court's comments show that the court understood the scope of its review. Accordingly, because defendant had no new evidence to present, and sought only to make new legal arguments, the superior court properly denied defendant's renewed motion to suppress. (*Trujillo, supra*, 217 Cal.App.3d at p. 1223 [When the motion to suppress is renewed in superior court, the

factual findings of the magistrate are binding on the superior court except to the extent the court allows new evidence.].)

Furthermore, in *People v. Bennett* (1998) 68 Cal.App.4th 396, the court reasoned that allowing new issues to be raised at a second suppression hearing would be contrary to the legislative intent to allow only one evidentiary hearing for suppression motions, because the prosecution would often have to recall witnesses or obtain testimony of additional witnesses to develop facts associated with the new issues. (*Id.* at pp. 405-406.) To prevent this, the *Bennett* court held that defendants who seek suppression at a preliminary hearing may not argue suppression theories in a renewed motion in the superior court unless those theories were litigated at the preliminary hearing. (*Id*. at pp. 406-407.)

Moreover, even if the superior court erred in understanding the scope of its discretion, we find any error to be harmless. "Admission of unlawfully seized evidence is not reversible error per se, but rather is subject to harmless error analysis." (*People v. Kraft* (2000) 23 Cal.4th 978, 1036, citing *People v. Rich* (1988) 45 Cal.3d 1036, 1080.) For the reasons previously explained, we independently find the trial court did not commit error in denying defendant's suppression motion. The evidence in the record supports the court's conclusion the officer had reasonable suspicion to detain and patdown defendant. Accordingly, any error in the superior court's failure to understand the scope of its discretion was harmless error.

IV

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

CODRINGTON
Acting P. J.

We concur:

FIELDS
J.

RAPHAEL
J.